



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 1
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MA 02109-3912

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED

December 19, 2013

Mr. Robert F. Bogan
President, Borden & Remington Corp.
President, Borden & Remington Fall River LLC
63 Water Street
Fall River, MA 02721

Re: (1) Draft Notice of Violation and Administrative Order Issued Pursuant to Section 113 of the Clean Air Act, 42 U.S.C. § 7413; and (2) Request for Information Issued Pursuant to Section 114 of the Clean Air Act, 42 U.S.C. § 7414

Dear Mr. Bogan:

Enclosed please find a draft Notice of Violation and Administrative Order ("NOV/AO") that EPA proposes to issue pursuant to Section 112(r) of the Clean Air Act ("CAA" or "Act"), 42 U.S.C. § 7412(r), for violations of the Act's risk management program regulations, set forth at 40 C.F.R. Part 68 ("RMP regulations"), and the General Duty Clause.¹ This letter also contains an attached Information Request issued pursuant to Section 114(a)(1) of the Act, 42 U.S.C. § 7414(a)(1), which requires submission of certain information needed to assess compliance with the Act.

On May 1 and 2, 2012, the United States Environmental Protection Agency Region 1 ("EPA") conducted an inspection of the facility operated by Borden & Remington Corp. ("Borden Corp.") located at 63 Water Street, Fall River, Massachusetts (the "Facility"). The purpose of this inspection (the "May 2012 inspection") was, in part, to evaluate Borden Corp.'s compliance with Section 112(r) of the Act, 42 U.S.C. § 7412(r), and the RMP regulations. The goal of Section 112(r) and the RMP regulations is to prevent accidental releases of substances that can cause serious harm to public health and the environment.

During the May 2012 inspection, my staff observed violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), in several processes at the Facility. Borden Corp. representatives were unable to answer some questions asked by EPA during the May 2012 inspection. Regardless, EPA found that Borden Corp. and Borden & Remington Fall River LLC ("Borden LLC"), the owner of the Facility, failed to comply with many requirements of the RMP regulations for the sodium

¹ The "General Duty Clause" of the Clean Air Act is found at Section 112(r)(1) of the Clean Air Act, 42 U.S.C. § 7412(r)(1). Pursuant to the General Duty Clause, owners and operators of stationary sources producing, processing, handling, or storing substances listed pursuant to Section 112(r)(3) of the Clean Air Act, 42 U.S.C. § 7412(r)(3), or any other extremely hazardous substance, have a general duty to (1) identify hazards which may result from accidental releases of such substances using appropriate hazard assessment techniques; (2) design and maintain a safe facility taking such steps as are necessary to prevent releases; and (3) minimize the consequences of accidental releases that do occur. A guidance that further explains the General Duty Clause may be found at www.epa.gov/emergencies/docs/chem/gdcregionalguidance.pdf.

hypochlorite production process, the ammonium hydroxide production process, and the repackaging process at the Facility. Moreover, the staging of chlorine and ammonia railcars in the fenced rail yard located across Water Street likely is a separate covered process that requires an RMP. EPA also found that Borden Corp. and Borden LLC failed to comply with the requirements of the General Duty Clause by using deficient chemical management practices in the storage of incompatible chemicals in Building 17 that, alone or in combination, are extremely hazardous substances. EPA also observed several other potentially dangerous conditions that either were not part of the RMP processes at the Facility or that EPA could not, without additional information, substantiate as violations.

On April 3, 2013, EPA conducted another on-site inspection of the Facility, this time to determine Borden Corp.'s compliance with Sections 112(d) and 112(h) of the CAA, 42 U.S.C. §§ 7412(d), 7412(h), and implementing regulations set forth at 40 C.F.R. Part 63, Subparts EEEE, FFFF, and VVVVVV (the "April 2013 inspection"). During the April 2013 inspection, Borden representatives indicated that certain changes had taken place at the Facility since the May 2012 inspection which may affect requirements under Section 112(r) of the CAA.

In order to assess these potential changes and to obtain answers to the questions Borden Corp. was unable to answer during the May 2012 inspection, under the authority of Section 114(a)(1) of the CAA, 42 U.S.C. § 7412(a)(1), which authorizes EPA to require a company to submit such information as EPA may reasonably require to determine compliance with and to carry out the purposes of the CAA, EPA requests responses to the attached Information Request (Attachment 2). Please submit your responses and the signed "Statement of Certification" (Attachment 1) **within forty-five (45) calendar days of your receipt of this letter to:**

Leonard Wallace, Environmental Scientist
U.S. EPA, Region 1
5 Post Office Square, Suite 100
Mail Code OES05-1
Boston, MA 02109-3912

with a copy to

Laura J. Berry, Enforcement Counsel
U.S. EPA, Region 1
5 Post Office Square, Suite 100
Mail Code OES05-1
Boston, MA 02109-3912

Please be advised that compliance with this Information Request is mandatory. Failure to provide the information requested may result in one or more of the following actions: (1) issuance of an administrative penalty order pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d); (2) issuance of an order requiring compliance with this request pursuant to Section 113(a) of the Act, 42 U.S.C. § 7413(a); (3) commencement of a civil action in accordance with Section 113(b) of the Act, 42 U.S.C. § 7413(b); and/or any other action authorized under the Act. Please be further advised that submittal of false, fictitious, or fraudulent statements may subject you to criminal penalties under Section 113(c) of the Act, 42 U.S.C. § 7413(c). This reporting

requirement is not subject to Office of Management and Budget review under the Paperwork Reduction Act.

Under Section 114(c) of the Act, 42 U.S.C. § 7414(c), and pursuant to regulations at 40 C.F.R. Part 2, including 40 C.F.R. § 2.301, you are entitled to show that any information that you provide to EPA involves trade secrets and is regarded as confidential business information and request that such information be treated as confidential. Any such claim for confidentiality must conform to the requirements of 40 C.F.R. § 2.203(b).

As noted above, a "Statement of Certification" must accompany your response to this Reporting Requirement. The statement must be signed and dated. This statement certifies that the response submitted to EPA is complete and contains all documents and information responsive to this request that is known to you following a complete and thorough review of all information and sources in your possession, control, or custody. Failure to properly certify, or submission of a fraudulent certification, may result in criminal proceedings against you.

The NOV/AO orders Borden Corp. and Borden LLC to correct the identified violations. EPA is electing to share a draft version of the NOV/AO with you at this time so that the information you provide in response to the Information Request may be incorporated into the Final NOV/AO, and to offer you the opportunity to provide EPA with comments regarding the factual allegations or timeline contained in the NOV/AO. For example, EPA recognizes that over a year has passed since the May 2012 inspection, when EPA brought many of these deficiencies to Borden Corp.'s attention. Accordingly, EPA hopes that some of these issues have already been addressed and welcomes such information. **If you have such information or other comments on the Draft NOV/AO, please provide them in writing to EPA within forty-five (45) days of your receipt of this letter.** This information may accompany your responses to the Information Request above or arrive under separate cover. EPA plans to issue a Final NOV/AO, whether identical to this Draft or modified in response to your timely-provided information and comments, no more than seventy-five (75) days from your receipt of this Draft.

Note that the issuance of this NOV/AO does not preclude EPA from electing to pursue further enforcement pursuant to the CAA, the Emergency Planning and Community-Right-to-Know Act, or any other federal statute that may apply.

During the May 2012 inspection, EPA observed several other potentially dangerous conditions that are either not part of the RMP processes at the Facility or that EPA could not, without additional information, substantiate as violations. These issues are not addressed in the NOV/AO, but EPA would like to discuss them with Borden Corp. and Borden LLC following issuance of the NOV/AO.

EPA encourages you to give this matter your immediate attention and to respond with your comments regarding the NOV/AO and responses to the Information Request within the time specified above. Should you wish to discuss this matter, please contact Leonard Wallace at (617) 918-1835. If you have any legal questions, or if your attorney wishes to communicate with EPA on your behalf, please contact Laura J. Berry, Enforcement Counsel, at (617) 918-1148.

Mr. Robert F. Bogan

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Sincerely,

A handwritten signature in cursive script, appearing to read "Susan Studlien".

Susan Studlien, Director
Office of Environmental Stewardship

cc: Leonard Wallace, EPA
Laura J. Berry, EPA

Enclosures:

1. Statement of Certification
2. Information Request
3. Draft Notice of Violation and Administrative Order
4. Small Business Resources information sheet

ATTACHMENT 1

Instructions: Complete and Include With Your Response.

STATEMENT OF CERTIFICATION

I certify under penalty of law that I have personally examined the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment.

Robert F. Bogan
President, Borden & Remington Corp.
President, Borden & Remington Fall River LLC

Date

ATTACHMENT 2

BORDEN & REMINGTON CORP. ("BORDEN CORP.") AND BORDEN & REMINGTON FALL RIVER LLC ("BORDEN LLC") INFORMATION REQUEST

Guidance on How to Respond. You must submit all responsive documents. Please respond separately to each of the questions, referencing each question by paragraph or subparagraph number in your answer. The response must include copies of all documents that you reference in your response or which you feel are relevant to the information being requested.

As part of your response, please complete the enclosed declaration (Attachment 1) and provide a cover letter carefully specifying what documentation is included to answer each question. (If documents requested in response to one item duplicate those requested by another question, submit only one copy of the documentation.) Your submission must be a self-explanatory, complete response that is dated and signed by an authorized facility official.

Continuing Obligation to Provide/Correct Information. If additional information or documents responsive to these questions become known or available after answering this request, including, but not limited to, specific information that may be deemed unknown at the time of your response, EPA hereby requests, pursuant to Section 114(a)(1) of the CAA, 42 U.S.C. § 7414(a)(1), that you supplement your response to EPA within ten (10) days of discovering such information. If at any time after the submission of this response, you discover or believe that any portion of the submitted information is incomplete or misrepresents the truth, notify Leonard Wallace of this fact as soon as possible and provide EPA with a corrected response.

Confidential Business Information. The information requested herein must be provided even though Shield may contend that it includes possible confidential information or trade secrets. You may, if you desire, assert a confidentiality claim covering part or all of the information requested, pursuant to Section 114(c) of the CAA, 42 U.S.C. § 7414(c), and 40 C.F.R. Section 2.203(b), by attaching to such information at the time it is submitted a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as "trade secret," or "proprietary," or "company confidential." Information covered by such a claim will be disclosed by EPA only to the extent, and only by means, of the procedures set forth in the statute and regulation identified above. If no such claim accompanies the information when it is received by EPA, it may be made available to the public by EPA without further notice to you. You should read the above cited regulations carefully before asserting a business confidentiality claim, since certain categories of information are not properly the subject of such a claim.

Please note the burden of proof is on you to demonstrate that information claimed as confidential satisfies the criteria set forth in 40 C.F.R. § 2.208. If any portion of your response contains information which you claim as confidential, you must submit two copies of any such "confidential business information" in accordance with the following procedures:

- 1) The first copy of any document containing such "confidential business information" must be complete and contain all information. Additionally, each such page must be marked conspicuously to indicate that it is claimed as confidential.
- 2) The second copy of any document that is subject to a CBI claim must be redacted so that it contains only information that is not claimed as confidential.

Definitions. The following definitions shall apply to the following words as they appear in this Attachment 2:

The terms "you" or "Borden Corp." or "Borden LLC" shall include Borden & Remington Corp. and Borden & Remington Fall River LLC, the addressees of this Request, as well as the addressees' officers, managers, employees, contractors, trustees, partners, successors, assigns, and agents.

The term "person" shall have the same definition as in Section 302(e) of the CAA (*i.e.*, an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, interstate body, or any agency, department, or instrumentality of the United States, and any officer, agent, or employee thereof).

The term "Facility" means the buildings, tank farms, outdoor processing and storage areas, and other buildings (including all physical structures) owned by Borden LLC or operated by Borden Corp. at 63 Water Street, Fall River, Massachusetts 02721.

The term "document" means any object that contains, records, stores or presents information, whether in paper, electronic or any other form. The term "document" includes the original or an identical and readable copy thereof, and all non-identical copies (whether different from the original by reason of notation made on such copies or otherwise).

The term "identify" means, with respect to a natural person, to set forth the person's name, present or last known business address and business telephone number, present or last known home address and home telephone number, and present or last known job title, position or business.

The term "identify" means, with respect to a corporation, partnership, business trust or other association or business entity (including a sole proprietorship), to set forth its full name, address, legal form (*e.g.*, corporation, limited liability company, partnership, etc.), organization, if any, and a brief description of its business.

The term "identify" means, with respect to a document, to provide its customary business description, its date, its number, if any (invoice or purchase order number), the identity of the author, addressor, addressee and/or recipient, and the substance or the subject matter.

The term "RMP" means a Risk Management Plan required by Section 112(r)(7) of the Clean Air Act, 42 U.S.C. § 7412(r)(7), and the regulations found at 40 C.F.R. Part 68.

The terms "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of this Information Request any information which might otherwise be construed to be outside its scope.

All terms not defined herein shall have their ordinary meaning, unless such terms are defined in the Clean Air Act or the regulations found at 40 C.F.R. Part 68, in which case the statutory or regulatory definitions shall apply.

A requested document, item or information shall be deemed to be in your possession, custody or control if you know where it is and can obtain access to it, even if it is not presently in your possession.

Questions

Provide a separate numbered response to each numbered paragraph or subparagraph below. **To the extent that you believe that you have answered a question in another section, please refer to the section and answer you have provided.**

Chemicals at the Facility

1. During EPA's April 2013 inspection, you indicated that you had discontinued or were planning to downsize or discontinue distribution of formaldehyde, hydrofluoric acid, and flammables. For (1) formaldehyde, (2) hydrofluoric acid, and (3) flammables (*i.e.*, flammable chemicals or mixtures with a National Fire Prevention Association flammability hazard rating of 3 or 4), please provide the following information:
 - a. Current inventory at the Facility, including type of material (trade name, chemical name, or CAS number), concentration, location (by building/room, tank location, or other description) and quantity.
 - b. If the material is no longer on site, please describe the last date that the material was present at the Facility, and whether you expect to receive any more of that material in the future.
 - c. If any amount of the material remains on site, please describe whether you intend to continue distributing this material, and your plans for use of the remaining material at the Facility.

Flammables Storage Area

2. Please describe your operations involving flammable liquids (*i.e.*, flammable chemicals or mixtures with a National Fire Prevention Association flammability hazard rating of 3 or 4), including whether you repackage or just redistribute flammable liquids. If you repackage flammable liquids, please identify where the repackaging occurs and describe this process.
3. Please describe what type of ventilation is provided in the flammable liquids storage room.
4. Please describe Borden Corp.'s maintenance program for drums or other containers containing flammable liquids, including how often containers are inspected for potential hazards such as leaking or corrosion, and provide copies of any inspection reports or other supporting documentation from the last year.

Compliance Audits

5. Please provide a copy of all reports prepared documenting the last two (2) compliance audits of covered processes conducted pursuant to 40 C.F.R. § 68.79, as well as documentation of actions taken in response to those compliance audits.

Process Hazard Analyses

6. Please provide a copy of the most recent process hazard analyses ("PHAs") conducted pursuant to 40 C.F.R. § 68.67 for each covered process at the Facility, as well as documentation of any actions

taken in response to or a schedule of proposed future actions to be taken in response to each such PHA.

Facility Siting Hazards

7. Please describe the procedures followed and precautions taken to protect and/or secure railcars of chlorine and ammonia in the event of an approaching hurricane or other severe storm. Please provide copies of all written procedures or other documents relating to the procedures followed and precautions taken to protect railcars during these events.

Chlorine Transfer Operations

8. Please describe the emergency shutdown systems utilized at the Facility to prevent or minimize accidental releases during chlorine transfer operations, including but not limited to the presence and use of remotely operated isolation devices to shut down the system.

Ammonium Hydroxide Production Process Overflow Tank

9. Please identify when the ammonium hydroxide production process equipment was installed, and when the ammonium hydroxide process overflow tank located in Building 5 (the "Overflow Tank") was installed and first used as an overflow tank for the ammonium hydroxide production process.
10. Please describe when and how the Overflow Tank is used in the ammonium hydroxide production process. In your response, please include: (a) whether the process is always connected to the Overflow Tank or it must be manually connected in order to catch overflow; (b) when and how the Overflow Tank is drained; (c) where and how vapors emanating from the Overflow Tank are captured and/or released; and (d) whether any ammonia detectors are used to detect vapors in or near the Overflow Tank or its release points.
11. Please provide copies of all operating procedures relating to the Overflow Tank, including but not limited to procedures for normal operations that cause overflow into the Overflow Tank, maintenance, emergency shutdown, and procedures for draining and/or cleaning the tank.
12. Please describe and provide supporting documentation of actions taken pursuant to 40 C.F.R. § 68.75, if any, to manage changes to the process chemicals, technology, equipment, and procedures following installation or use of the Overflow Tank as a part of the ammonium hydroxide production process. Please include any changes to the operating procedures, hazard analyses, mechanical integrity program for this process, as well as training provided regarding the process changes.

Fenced Rail Yard

13. During the May 2012 Inspection, you indicated that Borden Corp. regularly stores chlorine and anhydrous ammonia in railcars in a fenced rail yard located across Water Street from Building 17 and other portions of the Facility, also bordered by Mill Street, Massachusetts Route 79, and Interstate 195 (the "Fenced Rail Yard"). Please provide the following information for the last year regarding the storage of ammonia and chlorine in the Fenced Rail Yard:

- a. Who owns the land in the Fenced Rail Yard? If Borden Corp. or Borden LLC leases or otherwise contracts for the use of the Fenced Rail Yard, please provide a copy of the leases and contracts.
 - b. Who owns and/or controls the rail track in the Fenced Rail Yard? If the rail track in the Fenced Rail Yard is not private track, at what point on the way to the RMP processes does it become private track?
 - c. Identify all sellers and shippers of ammonia and chlorine which is delivered to the Fenced Rail Yard.
 - d. At what point in the delivery process does Borden Corp. sign papers accepting ownership or delivery of the ammonia and chlorine in railcars?
 - e. Are Borden Corp. employees or contractors in control of moving and/or unloading the railcars in the Fenced Rail Yard?
14. How long do railcars of ammonia and chlorine sit in the Fenced Rail Yard before they are moved and connected to other processes at the Facility? Please include both the maximum and typical amounts of time in your response.
15. How long are railcars of ammonia and chlorine disconnected from motive power before being moved to and connected to other processes at the Facility? Please include both the maximum and typical amounts of time in your response.
16. Please provide copies of all documentation regarding all ammonia- and chlorine-containing railcars (whether empty, partially empty, or full of ammonia and chlorine) received by Borden Corp. during the last twelve (12) months, as well as documentation regarding discharge of those railcars by Borden Corp., including but not limited to invoices, receipts, bills of lading, inventory forms, order confirmations, manifests, or other documents.

Company Information

17. Please provide the net worth of (a) Borden Corp.; and (b) Borden LLC.